C. J. Feb. 9th 1875 — 21-162 Field J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~407.~~ 182

VIRGINIA L. MINOR AND FRANCIS MINOR, HER HUSBAND, PLAINTIFFS IN ERROR,

vs.

REESE HAPPERSETT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED AUGUST 16, 1873.

Oct. Term 1874

SUPREME COURT OF THE UNITED STATES.

No. 467.

VIRGINIA L. MINOR AND FRANCIS MINOR, HER HUSBAND, PLAINTIFFS IN ERROR,

vs.

REESE HAPPERSETT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Citation	c	1
Writ of error	c	1
Petition	1	2
Demurrer	3	4
Demurrer sustained, final judgment, and appeal to general term	4	5
Judgment affirmed at general term	5	5
Certificate of circuit clerk	5	6
Writ of error to circuit court	6	6
Proceedings in supreme court of Missouri; cause submitted	7	7
Assignment of errors, joinder in errors, and agreed statement	8	7
Judgment of supreme court of Missouri	9	8
Writ of error from Supreme Court United States; citation and bond filed	9	8
Bond	10	8
Opinion of supreme court of Missouri	11	9
Clerk's certificate	11	11

a The United States of America to Reese Happersett, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Missouri, wherein Virginia L. Minor, and Francis Minor, her husband, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Washington Adams, presiding judge of the Supreme Court of the State of Missouri, this 7th day of May, in the year of our Lord one thousand eight hundred and seventy-three.

WASH. ADAMS,
Presiding Judge Supreme Court State of Missouri.

b S't Louis, May 7th, 1873.—I acknowledge service of this citation, and agree that the opinion of the Supreme Court of Missouri may be copied as part of the record in the transcript as made out for the Supreme Court of the United States, and as showing the points upon which the case was decided.

SMITH P. GALT,
Attorney for Defendant.

United States Supreme Court, district of Missouri. Virginia L. Minor and Francis Minor, P. E., vs. Reese Happersett, D. E. Citation. Filed May 7th, 1873. J. Thornburgh, clerk.

c UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the March term, 1873, thereof, between Virginia L. Minor and Francis Minor, her husband, plaintiffs, and Reese Happersett, defendant, a manifest error hath happened, to the great damage of the said Virginia L. Minor and Francis Minor, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said last-mentioned Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States *court* may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this seventh day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Issued at office in the city of S't Louis, with the seal of the circuit

court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S., Eastern District of Mo.
By H. C. GEISBERG, *Deputy.*

Allowed by supreme court.

WASH. ADAMS, *Judge, P. J.*

d STATE OF MISSOURI, *ss:*

I, Josiah Thornburgh, clerk of the supreme court held at S't Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office, in the city of S't Louis, this 21st day of June, A. D. 1873.

[SEAL.]

J. THORNBURGH, *Clk.*
Per JOS. F. BAIER, *D. C.*

(Indorsed:) United States circuit court, eastern district of Missouri. Virginia L. Minor and Francis Minor, P. E., vs. Reese Happersett, D. E. Writ of error to the supreme court of the State of Missouri. Returned and filed May 7th, 1873. J. Thornburgh, clerk.

1 STATE OF MISSOURI, *ss:*

Be it remembered that, heretofore, to wit, on the 13th day of February, in the year of our Lord one thousand eight hundred and seventy-three, there was filed in the office of the clerk of the Supreme Court, held at St. Louis, of the State of Missouri, a transcript of the *the* record and proceedings in a certain cause lately pending in the St. Louis circuit court, which transcript is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, heretofore, to wit, on the ninth day of November, in the year of your Lord eighteen hundred and seventy-two, there was filed in the office of the clerk of the circuit court of St. Louis County a petition which is in words and figures following, to wit:

Petition.

In the circuit court of Saint Louis County, December term, 1872.

ST. LOUIS COUNTY, *ss:*

VIRGINIA L. MINOR AND FRANCIS MINOR, her husband, plaintiffs,
v.
REESE HAPPERSETT, DEFENDANT.

The plaintiff, Virginia L. Minor, (with whom is joined her husband, Francis Minor, as required by the law of Missouri,) states that, under

the constitution and law of Missouri, all persons wishing to vote at any election must previously have been registered in the manner pointed out by law, this being a condition precedent to the exercise of the elective franchise.

That, on the fifteenth day of October, 1872, (one of the days fixed by law for the registration of voters,) and long prior thereto, she was a native-born free white citizen of the United States, and of the State of Missouri, and, on the day last mentioned, she was over the age of twenty-one years.

That, on said day, the plaintiff was a resident of the thirteenth election district of the city and county of St. Louis, in the State of Missouri, and had been so residing in said county and election district for
2 the entire period of twelve months and more immediately preceding said 15th day of October, 1872, and for more than twenty years had been and is a tax-paying, law-abiding citizen of the county and State aforesaid.

That, on said mentioned day, the defendant, having been duly and legally appointed registrar for said election district, and having accepted the office of registrar and entered upon the discharge of the duties thereof at the office of registration, to wit, No. 2004 Market street, in said city and county of St. Louis, it became and was, then and there, his duty to register all citizens resident in said district as aforesaid, entitled to the elective franchise, who might apply to him for that purpose.

The plaintiff further states that, wishing to exercise her privilege as a citizen of the United States, and vote for electors for President and Vice-President of the United States, and for Representative in Congress, and for other officers, at the general election held in November, 1872, while said defendant was so acting as registrar, on said 15th day of October, 1872, she appeared before him, at his office aforesaid, and then and there offered to take and subscribe the oath to support the Constitution of the United States and of the State of Missouri, as required by the registration law of said State, approved March 10th, 1871, and respectfully applied to him to be registered as a lawful voter, which said defendant then and there refused to do.

The plaintiff further states that the defendant, well knowing that she, as a citizen of the United States and of the State of Missouri, resident as aforesaid, was then and there entitled to all the privileges and immunities of citizenship, chief among which is the elective franchise, and, as such, was entitled to be registered, in order to exercise said privilege, yet, unlawfully intending, contriving, and designing to deprive the plaintiff of said franchise or privilege, then and there knowingly, wilfully, maliciously, and corruptly refused to place her name upon the list of registered voters, whereby she was deprived of her right to vote.

Defendant stated to plaintiff that she was not entitled to be registered or to vote because she was not a "male" citizen, but a woman!

That by the constitution of Missouri, article 2, sec. 18, and by the aforesaid registration law of said State, approved March 10, 1871, it is provided and declared that only "male citizens" of the United States, &c., are entitled or permitted to vote.

But the plaintiff protests against such decision, and she declares and maintains that said provisions of the constitution and registration law of Missouri aforesaid are in conflict with and repugnant to the Constitution of the United States, which is paramount to State authority; and that they are especially in conflict with the following articles and clauses of said Constitution of the United States, to wit:

Art. 1. Sec. 9. Which declares that no bill of attainder shall be passed.

" 1. " 10. No State shall pass any bill of attainder, or grant any title of nobility.

" 4. " 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

" 4. " 4. The United States shall guarantee to every State a republican form of Government.

3 Art. 6. This Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, anything in the constitutions or laws of any State to the contrary notwithstanding.

AMENDMENTS.

Art. 5. No person shall be * * * * deprived of life, liberty, or property without due process of law.

" 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

" 14, Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of her laws.

The plaintiff states that, by reason of the wrongful act of the defendant as aforesaid, she has been damaged in the sum of ten thousand dollars, for which she prays judgment.

JOHN M. KRUM,
FRANCIS MINOR,
JOHN B. HENDERSON,
Attorneys for Plaintiffs.

To which petition, on the 2nd day of January, A. D. 1873, a demurrer was filed, which is in words and figures following, to wit:

Demurrer.

In the circuit court of St. Louis County.

VIRGINIA L. MINOR AND FRANCIS MINOR, her husband, plaintiffs,
vs.
REESE HAPPERSETT, DEFENDANT.

The defendant, Reese Happersett, demurs to the petition of plaintiffs, and, for cause of demurrer, defendant says:

That said petition does not state facts sufficient to constitute a
4 cause of action, for the following reasons:

1st. Because said Virginia L. Minor, plaintiff, had no right to vote at the general election held in November, 1872, in said petition referred to.

2nd. Because said Virginia L. Minor had no right to be registered for voting by said defendant at the time and in the manner in said petition alleged.

3rd. Because it was the duty of the defendant to refuse to place said Virginia L. Minor's name upon the list of registered voters in said petition referred to; all of which appears in said petition.

SMITH P. GALT,
Att'y for Def't.

And, at a special term of said circuit court, being at the December term, A. D. 1872, the following proceedings were had in said cause, to wit:

Demurrer sustained.—Final judgment & appeal allowed to gen'l term.

VIRGINIA L. MINOR AND FRANCIS MINOR, her husband,
vs.
REESE HAPPERSETT.

THURSDAY, *January 2nd*, 1873.

Now, at this day, there is filed a demurrer to the plaintiffs' petition, and the same being submitted to the court, and the court being fully advised thereof, doth order that said demurrer be sustained.

The plaintiffs declining to plead further, it is, on motion of said defendant, by his attorney, ordered that final judgment be rendered herein.

It is, therefore, considered by the court that the plaintiffs take nothing by their suit in this behalf, and that said defendant go thereof without day, and recover of the plaintiffs his costs and charges herein expended, and that execution issue therefor.

On motion of plaintiffs, by their attorneys, an appeal is allowed them to the general term of this court from the judgment rendered herein.

And at a general term of said court, being at the February term, A. D. 1873, the following proceedings were had in said cause, to wit:

Judgment affirmed.

VIRGINIA L. MINOR AND FRANCIS MINOR, her husband,
vs.
REESE HAPPERSETT.

MONDAY, *February 3rd*, 1873.

Now come the parties, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered by the court at special term be, and the same is, in all things, hereby affirmed, at plaintiffs' costs, and that execution issue therefor.

Certificate.

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county of St. Louis, certify the foregoing to be a true, full, and complete transcript of all the proceedings had in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this seventh day of February, A. D. 1873.

[SEAL.] JOHN LEWIS, *Clerk.*

6 *Writ of error to circuit court.*

STATE OF MISSOURI, *ss:*

The State of Missouri to the honorable the judges of the eighth judicial circuit in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the St. Louis circuit court, wherein Virginia L. Minor and Francis Minor, her husband, were plaintiffs, and Reese Happersett was defendant, in a civil action, manifest error hath intervened, to the great damage of said plaintiffs, as by their complaint we are informed:

Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that the judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein for correcting the error what of right and according to law ought to be done.

Witness Francis Minor, clerk of our said supreme court, with the seal thereof hereunto affixed, at office in the city of St. Louis, the fourth day of February, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] FRANCIS MINOR, *Clerk.*
Per JOS. F. BAIER, *D. C.*

7 STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable supreme court of the State of Missouri, held at St. Louis, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this 7th day of February, 1873.

[SEAL.] JOHN LEWIS, *Clerk.*

And at a term of the supreme court of the State of Missouri, being at the March term, A. D. 1873, the following proceedings were had in said cause, to wit:

PROCEEDINGS IN SUPREME COURT OF MISSOURI.

THURSDAY, *April 3rd*, 1873.

Cause submitted on agreed statement.

VIRGINIA L. MINOR ET AL., P. E.,
vs.
REESE HAPPERSETT, D. E.

Now, at this day, come the parties aforesaid, by their attorneys, and submit this cause to the court upon an agreed statement of facts under Rule XVII of this court. Assignment of errors, agreed statement of facts, and brief of plaintiffs in error, and brief of defendant in error, filed.

Which assignment of errors and statement are in words and figures following, to wit:

8 *Assignment of errors.*

In the supreme court of the State of Missouri, March term, 1873.

VIRGINIA L. MINOR ET AL., P. E.,
vs.
REESE HAPPERSETT, D. E.

And now come the said plaintiffs in error, and say that, in the record and proceedings of the court below in the above-entitled cause, there is manifest error, and for error said plaintiffs in error assign the following, to wit:

The court erred in sustaining the demurrer of defendant. The petition stated a good cause of action.

JNO. M. KRUM AND
J. B. HENDERSON,
Att'ys for P. E.

Joinder in error.

And now comes the defendant in error, and for joinder in error says there is no error in the record and proceedings of said court in said cause, as assigned by said plaintiffs in error.

SMITH P. GALT,
Att'y for Def't.

Agreed statement.

STATEMENT.

This is an action brought by the plaintiff against the defendant, a registering officer, for refusing to register her as a lawful voter.

The defendant demurred to the petition, (a copy of which is appended hereto for greater convenience,) the defense, in substance, being based upon the constitution of Missouri, which provides (Art. 2, sec. 18) that "every male citizen of the United States, &c., * * * *

shall be entitled to vote;" and also upon the registration law of said State, approved March 10th, 1871, to the same effect; and it is claimed, therefore, that the defendant was justified in refusing to register the plaintiff on account of her sex.

9 The plaintiff, however, denies the validity of this clause of the Missouri constitution and the registration act based thereon, and contends that they are in violation of, and repugnant to, the Constitution of the United States, and particularly to those articles and clauses thereof which she has specified in her petition.

It is admitted by the pleadings that the plaintiff is a native-born, free white citizen of the United States and of the State of Missouri; that the defendant is a registrar, qualified and acting as such; that the plaintiff, in proper time and in proper form, made application to him to be registered, and that the defendant refused to register the plaintiff solely for the reason that she is a female, (and that she possesses the qualifications of an elector in all respects, except as to the matter of sex, as before stated.)

The question is thus broadly presented of a conflict between the constitution of the State of Missouri and that of the United States, as contemplated by the 25th section of the judiciary act of 1789 and 5th February, 1867.

(For copy of demurrer see page 3 of this transcript.)

And afterwards, at the same term of said court, the following judgment was rendered in said cause, to wit:

Judgment of St. Louis circuit court affirmed.

WEDNESDAY, *May 7th*, 1873.

VIRGINIA L. MINOR AND FRANCIS MINOR, HER husband, plaintiffs in error, *vs.* REESE HAPPERSETT, DEFENDANT IN ERROR.	Error to St. Louis circuit court.

Now again come the parties aforesaid, by their respective attorneys, and the court now being sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis circuit court be in all things affirmed and stand in full force and effect, and that the said defendant in error recover of the said plaintiffs in error his costs and charges herein expended, and have execution therefor. Opinion filed.

Writ of error from Sup. Ct U. S.—Citation & bond filed & approved.

Whereupon the said plaintiffs in error, by their attorneys, file' a writ of error from the Supreme Court of the United States in this
10 cause, which is allowed. Citation filed. Bond filed and approved. Which bond is in words and figures following, to wit:

Bond.

Know all men by these presents that we, Francis Minor, of the city and county of St. Louis, and State of Missouri, as principal, and Henry Stagg, of the same city, county, and State, as security, are held and firmly bound unto Reese Happersett in the full and just sum of five

hundred dollars, to be paid to the said Reese Happersett, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this seventh day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately at the March term, A. D. 1873, of the supreme court of the State of Missouri, in a suit depending in said court between Virginia L. Minor and Francis Minor, her husband, plaintiffs, and Reese Happersett, defendant, judgment was rendered against said Virginia L. Minor and Francis Minor, and the said Virginia L. Minor and Francis Minor, having obtained a writ of error of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Reese Happersett, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Virginia L. Minor and Francis Minor shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

11

FRANCIS MINOR. [SEAL.]
H. STAGG. [SEAL.]

Approved by supreme court.

WASH. ADAMS, *P. J.*

(Endorsed:) Supreme court of Mo. Virginia L. Minor et al., P. E., vs. Reese Happersett, D. E. Filed May 7, 1873. J. Thornburgh, cl'k.

Opinion of the court.

In the supreme court of the State of Missouri, March term, 1873.

VIRGINIA L. MINOR ET AL., P. E., *vs.* REESE HAPPERSETT, D. E. } Error to St. Louis circuit court.

Opinion of the court.

This was an action brought in the St. Louis circuit court by husband and wife against the defendant, who was a registering officer, for refusing to register Virginia L. Minor, the wife, as a lawful voter.

The defendant demurred to the petition on the ground that the said Virginia had no right to vote at the general election held in November, 1872, referred to in said petition, and on other grounds not necessary to mention. The defense being based upon the constitution of the State of Missouri, which provides that "every male citizen of the United States, &c., * * * * shall be entitled to vote at such elec-

12 tion for all officers, State, county, and municipal, made elective by the people, or any other election held in pursuance of the laws of this State," and upon the registration law of said State, approved March 10, 1871, to the same effect, and requiring the registration officers to register such voters, &c., and it is claimed, therefore, that defendant was justified in refusing to register the plaintiff (Virginia L. Minor) on account of her sex.

The validity of this clause of the State constitution and the registration act based thereon is denied by the plaintiffs, they contending that said constitutional provision and the act of the legislature in pursuance thereof are in violation of the Constitution of the United States, and particularly to the clauses thereof specified in the petition.

There is no question made in reference to the sufficiency of the petition in other respects, provided that females have a right to be registered as voters and vote at elections held under the constitution and laws of this State, notwithstanding the provisions of the constitution and laws of the State to the contrary thereof.

The question presented, then, is, whether there is a conflict between the Constitution of the United States and the constitution and laws of the State of Missouri on this subject.

That the different States of the Union had a right previous to the adoption of what is known as the 14th amendment to the Constitution of the United States to limit the right to vote at elections by their constitutions and laws to the male sex, I think, cannot at this day be questioned. The (I may say) universal construction of the Constitution of the United States on this subject and the almost universal practice of all of the States in reference to this subject from the adoption
13 of the Constitution to the present time ought to be sufficient to prevent the necessity of an investigation of the subject now. There are certainly some questions that the courts of the country have a right to consider as settled, and that question, I think, is one of them.

By the 14th amendment to the Constitution it is provided as follows:

"SECT. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"SECT. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

When we take in consideration the history of the times in
14 which this amendment was originated, and the circumstances which in the view of its originators produced its necessity, we will have but little trouble, it seems to me, to give it its proper interpretation. The whole slave population of the South had just been freed, and were about to enter in an entirely new relation with the balance of society, and were to assume new obligations and responsibilities. In this changed state of affairs it was thought by those who originated and adopted this amendment that it was absolutely necessary that these emancipated people should have the elective franchise in order to enable them to protect themselves against unfriendly legislation in which they could take no part. That unless these people had the right to vote and

thus protect themselves against oppression, their freedom from slavery would be a mere mockery, and their condition but little improved. It was to remedy this that the 14th amendment to the Constitution was adopted. It was to compel the former slave States to give these freedmen the right of suffrage, and to give them all of the rights of other citizens of the respective States, and thus make them "equal with other citizens before the law." There could have been no intention to abridge the power of the States to limit the right of suffrage to the male inhabitants. It was only intended to give the freedmen the same rights that were secured to all other classes of citizens in the State, and that if the other male inhabitants of the State over the age of twenty-one years enjoyed the right of suffrage, so should the males amongst the freedmen over the age of twenty-one years enjoy the same right. It was not intended that females or persons under the age of twenty-one years should have the right of suffrage conferred on them. This is not only shown by the history of the times when the amendment was adopted, and the circumstances which produced it, but by reference to the 2nd section of said amendment it will be seen that the right to restrict the right of suffrage to the male inhabitants by a State is clearly recognized. If "the right to vote, &c., is denied to any of the male inhabitants of such State, being twenty-one years of age," &c., is the language used; this clearly recognizes the right and seems to anticipate the exercise of the right on the part of the States to restrict the right of suffrage to the male inhabitants.

I think the circuit court committed no error in sustaining the demurrer to the petition.

Judge Wagner absent; the other judges concurring, the judgment of the circuit court is affirmed.

H. M. VORIES.

(Endorsed:) Virginia L. Minor et al., P. E., vs. Reese Happersett, D. E. Opinion per Vories. Judgment affirmed. Filed May 7, 1873. J. Thornburgh, clerk.

STATE OF MISSOURI, *ss:*

I, Josiah Thornburgh, clerk of the supreme court, held at St. Louis, of the State of Missouri, certify the foregoing to be a true, full, and complete transcript of all the proceedings had in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office in the city of St. Louis this twenty-first day of June, A. D. 1873.

[SEAL.]

J. THORNBURGH, *Clk.*
Per JOS. F. BAIER, *D. C.*

(Indorsement on cover:) No. 467. Virginia L. Minor and Francis Minor, her husband, plaintiffs in error, vs. Reese Happersett. Missouri sup. court. Filed 16th August, 1873.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

VIRGINIA L. MINOR, *et al.*,
Plaintiffs in error.

vs.

REESE HAPPERSETT,
Defendant in error.

STATEMENT AND BRIEF

OF

PLAINTIFF IN ERROR.

JOHN M. KRUM, JOHN B. HENDERSON, FRANCIS MINOR,
Attorneys for Plaintiff.

SAINT LOUIS:
TIMES BOOK AND JOB PRINTING HOUSE.
1874.

In the Supreme Court of the United States,

OCTOBER TERM, 1873.

VIRGINIA L. MINOR, *et. al.*,
Plaintiffs in error.

vs.

REESE HAPPERSETT,
Defendant in error.

STATEMENT AND BRIEF

OF

PLAINTIFF IN ERROR.

JOHN M. KRUM, JOHN B. HENDERSON, FRANCIS MINOR,
Attorneys for Plaintiff.

ST. LOUIS, MO.
ST. LOUIS TIMES COMPANY, BOOK AND JOB PRINTERS.
1873.

STATEMENT.

This is an action, brought by the plaintiff, against the defendant, a registering officer, for refusing to register her as a lawful voter. The petition is as follows:

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, DECEMBER TERM, 1872.

ST. LOUIS COUNTY. } ss.

VIRGINIA L. MINOR AND FRANCIS MINOR, HER HUSBAND, *plaintiffs*, *vs.* REESE HAPPERSETT, *defendant*.

The plaintiff, Virginia L. Minor, (with whom is joined her husband, Francis Minor, as required by the law of Missouri,) states, that under the Constitution and law of Missouri, all persons wishing to vote at any election, must previously have been registered in the manner pointed out by law, this being a condition precedent to the exercise of the elective franchise.

That on the fifteenth day of October, 1872, (one of the days fixed by law for the registration of voters) and long prior thereto, she was a native born, free, white citizen of the United States, and of the State of Missouri, and on the day last mentioned, she was over the age of twenty-one years.

That on said day, the plaintiff was a resident of the thirteenth election district of the city and county of St. Louis, in the State of Missouri, and had been so residing in said county and election district, for the entire period of twelve months and more, imme-

diately preceeding said fifteenth day of October, 1872, and for more than twenty years had been and is, a tax-paying, law-abiding citizen of the county and State aforesaid.

That on said last mentioned day, the defendant, having been duly and legally appointed Registrar for said election district, and having accepted the said office of Registrar, and entered upon the discharge of the duties thereof at the office of registration, to-wit: No. 2004 Market street, in said city and county of St. Louis, it became, and was then and there his duty to register all citizens, resident in said district as aforesaid, entitled to the elective franchise, who might apply to him for that purpose.

The plaintiff further states, that wishing to exercise her privilege as a citizen of the United States, and vote for Electors for President and Vice-President of the United States, and for a Representative in Congress, and for other officers, at the general election held in November, 1872, while said defendant was so acting as Registrar, on said 15th day of October, 1872, she appeared before him, at his office aforesaid, and then and there offered to take and subscribe the oath to support the Constitution of the United States, and of the State of Missouri, as required by the registration law of said State, approved March 10th, 1871, and respectfully applied to him to be registered as a lawful voter, which said defendant then and there refused to do.

The plaintiff further states, that the defendant, well knowing that she, as a citizen of the United States and of the State of Missouri, resident as aforesaid, was then and there entitled to all the privileges and immunities of citizenship, chief among which is the elective franchise, and as such was entitled to be registered, in order to exercise said privilege, yet, unlawfully intending, contriving and designing to deprive the plaintiff of said franchise or privilege, then and there, knowingly, willfully, maliciously and corruptly refused to place her name upon the list of registered voters, whereby she was deprived of her right to vote.

Defendant stated to plaintiff that she was not entitled to be registered, or to vote, because she was not a "male" citizen, but a woman.

That by the Constitution of Missouri, article 2, section 18, and by the aforesaid registration law of said State, approved March 10, 1871, it is provided and declared, that only "male citizens" of the United States, etc., are entitled or permitted to vote.

But the plaintiff protests against such decision, and she declares and maintains that said provisions of the Constitution and registration law of Missouri aforesaid, are in conflict with, and repugnant to the Constitution of the United States, which is paramount to State authority; and that they are especially in conflict with the following articles and clauses of said Constitution of the United States, to wit:

Art. 1. Sec. 9.	Which declares that no Bill of Attainder shall be passed.
" 2. " 10.	No State shall pass any Bill of Attainder, or grant any title of nobility.
" 4. " 2.	The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.
" 4. " 4.	The United States shall guarantee to every State a Republican form of government.
" 6.	This Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, anything in the Constition or laws of any State to the contrary notwithstanding.

AMENDMENTS.

Art. 5. No person shall be * * * deprived of life, liberty or property, without due process of law.

" 9. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

" 14. Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.

The plaintiff states, that by reason of the wrongful acts of the defendant as aforesaid, she has been damaged in the sum of ten thousand dollars, for which she prays judgment.

JOHN M. KRUM,
FRANCIS MINOR,
JOHN B. HENDERSON,
Attorneys for Plaintiffs.

The defendant demurred to the petition, a copy of which demurrer is as follows:

DEMURRER.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY.

Virginia L. Minor and
Francis Minor, her husband,
plaintiffs,
vs.
Reese Happersett.

The defendant, Reese Happersett, demurs to the petition of plaintiffs, and for cause of demurrer defendant states that said petition does not state facts sufficient to constitute a cause of action, for the following reasons:

1. Because said Virginia L. Minor, plaintiff, had no right to vote at the general election held in November, 1872, in said petition referred to.

2. Because said Virginia L. Minor had no right to be registered for voting by said defendant, at the time and in the manner in said petition alleged.

3. Because it was the duty of the defendant to refuse to place said Virginia L. Minor's name upon the list of registered voters in said petition referred to.

All of which appears by said petition.

SMITH P. GALT,
Attorney for defendant.

The defense, in substance, being based upon the Constitution of Missouri, which provides (Art. 2, Sec. 18.) that "every MALE citizen of the United States, etc., * * * shall be entitled to vote;" and also, upon the registration law of said State, approved March 10, 1871, which is as follows:

An act to provide for a uniform registration of voters, the appointment of judges of elections, and repealing all former acts relating thereto.

Be it enacted by the General Assembly of the State of Missouri, as follows:

"SECTION 1. Every male citizen of the United States, and every person of foreign birth who may have declared his intention to become a citizen of the United States, according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in this State one year next preceding his registration as a voter, and during the last sixty days of that period shall have resided in the county, city or town where he seeks registration as a voter, who is not convicted of bribery, perjury, or other infamous crime, nor directly or indirectly interested in any bet or wager depending upon the result of the election for which such registration is made, nor serving at the time of such registration in the regular army or navy of the United States, shall be entitled to vote at such elections for all officers, State, county or municipal, made elective by the people, or any other election held in pursuance of the laws of this State; but he shall not vote elsewhere than in the election district where his name is registered, except as provided in the twenty-first section of the second article of the Constitution.

"SEC. 2. The several clerks of the county courts in this State shall provide a suitable registration book for each election district in their several counties, which shall have written or printed therein the following oath: 'We, the undersigned, do solemnly swear or affirm that we will support the Constitution of the United States, and of the State of Missouri.'

"SEC. 3. On or before the 9th day of March, 1871, the several county courts in this State shall appoint some competent person to act as Registrar in each election district in their respective counties, who shall have the qualifications of an elector in his election district, and who shall hold his office until the general election in

1872, and until his successor is elected and qualified. Said Registrar shall have authority to administer all oaths which may be necessary in the registration of voters.

"SEC. 4. Any person having the qualification of a voter as prescribed in the first section of this act, and who shall take and subscribe the oath required of voters, by the second section of this act, and who applies for registration at the time and in the manner prescribed by law, and any naturalized citizen who shall subscribe to a written statement, under oath, before the Registrar, that he is naturalized according to the laws of the United States and of this State, and has resided in this State, according to the first section of this act, and that his naturalization papers, or evidence of his citizenship, have been lost or destroyed, or that the same are not accessible to him, and shall state where he was naturalized, shall be accepted by the registering officer, and duly registered as a qualified voter."

It is claimed, therefore, that the defendant was justified in refusing to register the plaintiff on account of her sex.

The plaintiff, however, denies the validity of this clause of the Missouri Constitution, and the registration act based thereon, and contends that they are in violation of, and repugnant to, the Constitution of the United States, and particularly to those articles and clauses thereof, which she has specified in her petition.

It is admitted, by the pleadings, that the plaintiff is a native born, free, white citizen of the United States, and of the State of Missouri, that the defendant is a Registrar, qualified and acting as such, that the plaintiff, in proper time and in proper form, made application to him to be registered, and that the defendant refused to register the plaintiff solely for the reason that she is a FEMALE, (and that she possesses the qualifications of an elector, in all respects, except as to the matter of sex, as before stated.)

The question is thus broadly presented of a conflict between the Constitution of the State of Missouri and that of the United States, as contemplated by the twenty-fifth section of the judiciary act of 1789, and the supplemental act of February 5, 1867.

ASSIGNMENT OF ERRORS.

And now comes Virginia L. Minor, the plaintiff in error in the above entitled cause, by her attorneys, John B. Henderson, John M. Krum and Francis Minor, and says that in the records and proceedings in the above entitled cause, in said Supreme Court of the State of Missouri, there is manifest error in this, to wit:

1st. Because the said Supreme Court erred in affirming the judgment of the St. Louis Circuit Court—thereby, in effect, sustaining the demurrer filed in said Circuit Court by the defendant to the petition of the plaintiff.

2d. Because the said Supreme Court erred in its judgment affirming the judgment of the St. Louis Circuit Court—thereby, in effect, declaring that the plaintiff in error was not entitled to vote at the election mentioned in the record.

3d. Because the said Supreme Court of Missouri erred in affirming the judgment of the St. Louis Circuit Court—thereby, in effect, declaring that the Constitution and laws of Missouri, before recited, do not conflict with the Constitution of the United States.

ARGUMENT AND BRIEF.

We think the chief difficulty in this case, is one of fact rather than of law. The practice is against the plaintiff. The States, with one exception, that we shall notice hereafter more in detail, have uniformly claimed and exercised the right to act, as to the matter of suffrage, just as they pleased—to limit or extend it, as they saw proper. And this is the popular idea on the subject. Men accept it as a matter of fact, and take for granted it must be right. So in the days of African slavery, thousands believed it to be right—even a Divine institution. But this belief has passed away; and, in like manner, this doctrine of the right of the States to exercise unlimited and absolute control over the elective franchise of citizens of the United States, must and will give way to a truer and better understanding of the subject.

The plaintiff's case is simply one of the means by which this end will ultimately be reached.

We claim, and presume it will not be disputed, that the elective franchise is a privilege of citizenship within the meaning of the Constitution of the United States. In order to get a clearer idea of the true meaning of this term citizenship, it may be well to recur for a moment to its first introduction and use in American law.

Before the colonists asserted their independence they were politically bound to the sovereign of Great Britain, by what is termed, in English law, "allegiance;" and those from whom this allegiance was due were termed "subjects." But when these "bands," as they are termed in the Declaration of Independence, were dissolved, the political relation became changed, and we no longer hear in the United States the terms "subject" and "allegiance," except the latter, which is used to express the paramount duty of our citizens to our own government. The term citizen was substituted for that of "subject."

But this was not a mere change of name; the men who framed the Constitution of the United States had all been "subjects" of the English king, and they well knew the radical change wrought by the revolution.

In the new political sovereignty thus created, the feudal idea of dependence gave way to that of *independence*, and the people became their own sovereigns or rulers in the government of their own creation. Of this body politic, represented by the Constitution of the United States, all persons born or naturalized therein and subject to the jurisdiction thereof, are members; without distinction as to political rights or privileges, except that the head or chief of the new government must be native born—and this exception the more strongly proves the rule. IT IS TO THIS CONSTITUTION, THEREFORE, WE MUST LOOK FOR THE LIMITATIONS, IF ANY, THAT MAY BE PLACED UPON THE POLITICAL RIGHTS OF THE PEOPLE OR CITIZENS OF THE UNITED STATES.

A LIMITATION NOT FOUND THERE, OR AUTHORIZED BY THAT INSTRUMENT, CANNOT BE LEGALLY EXERCISED BY ANY LESSER OR INFERIOR JURISDICTION.

But the subject of suffrage, (or the qualifications of electors, as the Constitution terms it), is simply remitted to the States by the Constitution, to be regulated by them; not to limit or restrict the right of suffrage, but to carry the same fully into ef-

fect. It is impossible to believe that anything more than this was intended. In the first place, it would be inconsistent and at variance with the idea of the supremacy of the federal government; and, next, if the absolute, ultimate and unconditional control of the matter had been intended to be given to the States *it would have been so expressed.* It would not have been left to doubt or implication. In so important a matter as suffrage, the chief of all political rights or privileges, by which, indeed, life, liberty and all others are guarded and maintained, and without which they would be held completely at the mercy of others; we repeat, it is impossible to conceive that this was intended to be left wholly and entirely at the discretion of the States.

A right so important must not be the subject of implication. Some positive warrant or authority must be shown for it, and, in the case at bar, we challenge its production. There is another view of the subject that is important to be considered. There can be no division of citizenship, either of its rights or its duties. There can be no *half-way* citizenship. Woman, as a citizen of the United States, is entitled to *all* the benefits of that position, and liable to all its obligations, *or to none.* Only citizens are permitted to preemt land, obtain passports, etc., all of which woman can do; and, on the other hand, she is taxed, (without her "consent,") in further recognition of her citizenship; and yet, as to this chief privilege of all, she is forbidden to exercise it. We call upon the State to show its warrant for so doing—for inflicting upon the plaintiff and the class to which she belongs, the bar of *perpetual disfranchisement*, where no crime or offence is alleged or pretended, and without "due process of law."

We charge it as a "bill of attainder," of the most odious and oppressive character. The State can no more deprive a citizen of the United States of one privilege than of another, except by the "law of the land." There is no security for freedom if this be denied. To use the language of Mr. Madison, such a course "violates the vital principle of free government, that those who

are to be bound by laws, ought to have a voice in making them." —[Madison Papers, vol. 3—appendix, p. 12.

It is sometimes said this is one of the "*reserved* rights" of the States. But this cannot be, for the simple reason that, as to the "privileges and immunities" of federal citizenship, they had no existence prior to the adoption of the federal Constitution; how then could they be reserved?

As Mr Justice Story says: "The States can exercise no powers whatsoever, which exclusively spring out of the existence of the national government which the Constitution does not delegate to them. * * * No State can say that it has reserved what it never possessed."—[Commentaries § § 624-627.

We say, then, that the States may regulate, but they have no right to prohibit the franchise to citizens of the United States. They may prescribe the qualifications of the electors. They may require that they shall be of a certain age, be of sane mind, be free from crime, etc., because these are conditions for the good of the whole, and to which all citizens, sooner or later, may attain. But to single out a class of citizens and say to them, "Notwithstanding you posses all these qualifications, you shall never vote, or take part in your government," what is it but a bill of attainder?

To show that the mere regulation of this matter of suffrage was left to the States, for the purpose we have indicated, and not to their absolute and ultimate control, we will now quote the language of one of the framers of the Constitution, to whom, indeed, has been applied the epithet of "Father of the Constitution"—James Madison; and this, too, in reply to questions by Mr. Monroe, who sought an explanation on these very points. We quote from the debates in the Virginia convention upon the adoption of the federal Constitution:

"Mr. Monroe wished that the honorable gentleman who had been in the federal convention would give information respecting

the clause concerning elections. He wished to know why Congress had an ultimate control over the time, place and manner of elections of representatives, and the time and manner of that of Senators, and also why there was an exception as to the *place* of electing Senators."

"MR. MADISON—Mr. Chairman, the reason of the exception was, that if Congress could fix the *place* of choosing the Senators, it might compel the State Legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the Senators, to prevent its own dissolution.

"With respect to the other point, it was thought that the regulation of time, place and manner of electing the representatives should be uniform throughout the continent. Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some States, particularly South Carolina, with respect to *Charleston*, which is represented by thirty members.

"SHOULD THE PEOPLE OF ANY STATE BY ANY MEANS BE DEPRIVED OF THE RIGHT OF SUFFRAGE, IT WAS JUDGED PROPER THAT IT SHOULD BE REMEDIED BY THE GENERAL GOVERNMENT.

"It was found impossible to fix the time, place and manner of the election of representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State government, as being best acquainted with the situation of the people, SUBJECT TO THE CONTROL OF THE GENERAL GOVERNMENT, in order to enable it to produce uniformity, and prevent its own dissolution. And, considering the State governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular

regulations should be submitted to the former and the general regulations to the latter. *Were they exclusively under the control of the State governments, the general government might easily be dissolved.*

"But if they be regulated properly by the State Legislature, the Congressional control will very properly never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution."—(*Elliot's Debates*, vol. 2, pages 276–7.

It seems to us that nothing can be clearer or plainer than this, coming to us, as it does, with all the weight and authority of Mr. Madison himself. But it may be asked: If this be so, why was not the question sooner raised? We answer, *at that very time*, and for nearly twenty years afterward, *women did vote*, unquestioned and undisputed, in one of the States (New Jersey). The men who framed the Constitution were then living—some of them in this very State; yet we hear no mention of its being unconstitutional, no objection made to it whatever.

It is true that subsequently this provision was omitted (about 1807) in the revisal of the State Constitution (as we think, very unjustly), but the fact remains of the unquestioned exercise of this privilege by women at the very time the federal Constitution was adopted, and for years afterward. This fact is worth a thousand theories.

Again, we think that one of the causes of the popular error on this subject arises from forgetting or overlooking the *dual* nature of our citizenship.

We are citizens of a State, as well as of the United States. This is alluded to in several of the early cases, and its importance is clearly pointed out. We quote, first, from Talbot *vs.* Jansen, 3 Dallas, Sup. Ct. Rep., 153 (1795), in which Mr. Justice Patterson says: The act of the Legislature of Virginia does not apply.

Ballard was a citizen of Virginia, and also of the United States. If the Legislature of Virginia pass an act specifying the causes of expatriation and prescribing the manner in which it is to be effected by the citizens of that State, what can be its operation on the citizens of the United States?

If the act of Virginia affects Ballard's citizenship so far as respects that State, can it touch his citizenship so far as regards the United States? Allegiance to a particular State is one thing; allegiance to the United States is another. Will it be said that the renunciation of allegiance to the former implies or draws after it a renunciation of allegiance to the latter? The sovereignties are different; the allegiance is different; the right, too, may be different. Our situation being new, unavoidably creates new and intricate questions. We have sovereignties moving within a sovereignty.

Judge Cabell, also of the Supreme Court of Appeals of Virginia, alludes to it briefly in the case of Murray *vs.* McCarty, 2 Munford, 398. He says: "But although the Constitution of the *United States* has wisely given to the citizens of each State the privileges of a citizen of any other State, yet it clearly recognizes the distinction between the character of a citizen of the *United States* and a citizen of any *individual State*, and also of citizens of *different States*, *etc.*"

Or, if a still further and later authority be desired, we have it in the language of Chief Justice Taney, who says, in the Dred Scott case; "In discussing this question we must not confound the rights of citizenship, which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not, by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States.———But if he rank as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him as to the rights of person, with all the

privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a State, and of the United States, they would be entitled to all of these privileges and immunities, in every State, and the State could not restrict them; *for they would hold these privileges and immunities under the paramount authority of the federal government, and its courts would be bound to maintain and enforce them*, THE CONSTITUTION AND LAWS OF THE STATE TO THE CONTRARY NOTWITHSTANDING.

"And if the States could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation, and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guarantees rights to the citizen, and the State cannot withhold them."—[Dred Scott *vs.* Sanford, 19 Howard's Rep., p. 405 and 422.

Now, substitute in the above, for "persons of the African race," *women*, who are "citizens of the State and of the United States," and you have the key to the whole position.

We will now consider the clauses of the Constitution before recited, somewhat in detail:

AS TO "BILLS OF ATTAINDER," "DUE PROCESS OF LAW," ETC.—"No State shall pass any bill of attainder," etc. "A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text book, judicial magistracy, it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced,

whether comformable to the rules of evidence or otherwise, and it fixes the degree of punishment in accordance with its own notions of the enormity of the offence. These bills are generally directed against the individuals by name, but they may be directed against a whole class.

The theory upon which our political institutions rest, is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that, in the pursuit of happiness, all avocations, all honors, all positions are alike open to every one, and that, in the protection of these rights, all are equal before the law. Any deprivation or suspension of any of these rights, for past conduct, is punishment, and can be in no otherwise defined.

Punishment not being, therefore, restricted, as contended by counsel, to the deprivation of life, liberty or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri Constitution, being in effect punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement.—Cummings *vs.* the State of Missouri, 4 Wallace, 351--323, and *ex parte* Garland—same volume.

We are aware that the Supreme Court of Missouri, in the case of Blair *vs.* Ridgley, hold a different view, but we submit that the cases differ in a most material point, to wit: In the Blair case he was merely required to take the oath taken by all voters; and, by refusing to do so, *he virtually disfranchised himself.* In this case, however, the disfranchisement of the plaintiff is arbitrary and insurmountable; and we further submit, that the arguments in this case present it in a different, and, we think, a broader view than was taken in the Blair case. But to show that we are not unsupported by authority in this matter, we will now quote from a New York case, very similar to the Blair case, where the elector was required, but refused to take the oath, etc.

MILLER, J.—This case involves the constitutional validity of that portion of the act to provide for a convention to revise and amend the Constitution of this State, which excludes from the privilege of voting all who refuse to take the test oath prescribed by the act in question.

I think that the oath in question was unconstitutional and invalid, for the reasons which I will proceed to state. The first subdivision of the tenth section of the first article of the Constitution of the United States provides, that "no State shall pass any bill of attainder, *ex post facto* law, or laws impairing the obligations of contracts, or grant any title of nobility." The provision of the act which is to be considered declares, that no person shall vote at the election for delegates to said convention who will not, if duly challenged, take and subscribe an oath that he has not done certain acts mentioned therein, and inflicts the penalty of political disfranchisement, without any preliminary examination or trial, for a refusal to take said oath.

By this enactment the citizen is deprived, upon declining to conform to its mandate, of a right guaranteed to him by the Constitution and laws of the land, and one of the most inestimable and invaluable privileges of a free government. There can be no doubt, I think, that to deprive a citizen of the privileges of exercising the elective franchise, for any conduct of which he has previously been guilty, is to inflict a punishment for the act done.

It imposes upon him a severe penalty, which interferes with his privileges as a citizen, affects his respectability and standing in the community, degrades him in the estimation of his fellow men, and reduces him below the level of those who constitute the great body of the people of which the government is composed. It moreover inflicts a penalty which, by the laws of this State, is a part of the punishment inflicted for a felony, and which follows conviction for such a crime. It is one of the peculiar characteristics of our free institutions, that every citizen is permitted to enjoy certain rights and privileges, which place him upon an

equality with his neighbors. Any law which takes away or abridges these rights, or suspends their exercise, is not only an infringement upon their enjoyment, but an actual punishment. That such is the practical effect of the test oath required by the act in question, can admit of no doubt, in my judgment. It arbitrarily and summarily, and without any of the forms of law, punishes for an offense created by the law itself. In the formation of our national Constitution, its framers designed to prevent and guard against the exercise of the power of the Legislature, by usurping judicial functions, and for the punishment of alleged offences in advance of trial, for offences unknown to the law, and by bill of attainder and *ex post facto enactments*, etc.—Green *vs.* Shumway, 36 Howard's Practice, Rep. p. 7, 8.

On the same subject, we will next quote from a decision by the Supreme Court of Nevada:

LEWIS, C. J.—The *form* of the law by which an individual is deprived of a constitutional right is immaterial. The test of its constitutionality is, whether it operates to deprive any person of a right guaranteed or given to him by the Constitution. If it does, it is a nullity, whatever may be its form. Surely a law which deprives a person of a right, by requiring him to take an oath which he cannot take, is no less objectionable than one depriving him of such right in direct terms.

To make the enjoyment of a right depend upon an impossible condition, or upon the doing of that which cannot legally be done, is equivalent to an absolute denial of the right under any condition. The effect, and not the language of the law, in such case, must determine its constitutionality. It would not be doubted for a moment that a law expressly denying the elective franchise to any person upon whom the Constitution confers it, would be unconstitutional. Why, then, is a law less objectionable which, although not expressly and directly, yet no less certainly denies the right, etc.—(Davies *vs.* McKeeby, 5 Nevada, Rep. 7, 371.)

We quote next from a Tennesse case:

The elective franchise is a right which the law protects and enforces as jealously as it does property in chattels or lands. It matters not by what name it is designated—the right to vote, the elective franchise, or the privilege of the elective franchise—the person who, under the Constitution and laws of the State, is entitled to it, has a property in it, which the law maintains and vindicates as vigorously as it does any right of any kind which men may have and enjoy.

The rules of law which guard against deprivation or injury, the rights of persons in corporeal properties, are alike and equally applicable to the elective franchise, and alike and equally guard persons invested with it against deprivation of or injury to it. Persons invested with it cannot be deprived of it otherwise than by "due process of law."—(The State *vs.* Staten, 6 Caldwell's Rep., p. 243. See also Rison *vs.* Farr, 25 Ark. Rep., p. 173; Winehamer *vs.* People, 13 N. Y., 378; State *vs.* Symonds 57 Maine, 150; 511 Huber *vs.* Riley, 53 Penn., 112; Cooley's Constitutional Limitations.

We conclude this list of references with Mr. Webster's celebrated definition in the Dartmouth College case (4 Wheaton, 581):

"By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees and forfeiture, in all possible forms, would be the law of the land.

"Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the Legislature. There would be no general permanent law for courts to administer, or for men to live under.

"The administration of justice would be an empty form—an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law, or to administer the justice of the country."

That the elective franchise is a privilege of citizenship, we have the authority of Judge Washington, for he says: "What are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature *fundamental;* which belong of right to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent and sovereign. What those fundamental principles are, it would perhaps be more tedious than difficult to enumerate.

"They may, however, be all comprehended under the following general heads: Protection by the government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole; the right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of every kind in the courts of the State; to take hold, and dispose of property, either real or personal; and an exemption from higher taxes or imposition than are paid by the citizens of the other State, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly

embraced by the general description of privileges deemed to be fundamental; to which may be added, THE ELECTIVE FRANCHISE, as regulated and established by the laws or Constitution of the State in which it is to be exercised."—[Confield *vs.* Corryell, 4 Wash. C. C., 380.—Cited and approved in Dunham *vs.* Lamphere, 3 Gray, 276, (Mass.); Bennett *vs.* Boggs, Baldwin Rep., 72.

A proper construction of art. 1, sec. 2, of the Constitution of the United States, will further demonstrate the proposition we are endeavoring to uphold. That section is as follows:

ARTICLE 1, Section 2. "The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications for electors of the most numerous branch of the State legislature."

This section consists of two clauses, but in neither is there a word as to the sex of the elector. He, or she, must be one of the PEOPLE, or "citizens," as they are designated in the Constitution, that is all.—Story's Comms. § 579.

The "people" are to elect. This clause fixes the CLASS of voters; the other clause is in subordination to that, and merely provides, that as touching qualifications, there shall be one and the same standard for the federal and for the State elector. Both are mentioned and neither is or can be excluded by the other.

The RIGHT to vote is very different from the *qualification* necessary in a voter. A person may have the right to vote, and yet not possess the necessary qualifications for exercising it. In this case, the right to vote, is derived from the federal Constitution, which designates the class of persons who may exercise it, and

provides that the Federal elector shall conform to the regulations of the State, so far as time, place and manner of exercising it are concerned. But it is clear that under this authority the State has no right to lay down an arbitrary and impossible rule. As before stated by the Chief Justice of Nevada: "To make the enjoyment of a right depend upon an impossible condition, is equivalent to an absolute denial of it under any condition."

In conclusion, we will consider, as briefly as possible, the points made by the Supreme Court of Missouri:

We quote from the opinion: "The question presented then is, whether there is a conflict between the Constitution of the United States and the Constitution and laws of the State of Missouri on this subject. That the different States of the Union had a right, previous to the adoption of what is known as the Fourteenth amendment to the Constitution of the United States, to limit the right to vote at election by their constitutions and laws to the male sex, I think cannot at this day be questioned."

Undoubtedly the *practice* in the different States, as we have before said, is against the claim made by the plaintiff, although, as we shall show, in the early days of the Republic, this practice was by no means universal. But, when the Court states that the *right* of the States to do this cannot be questioned, it assumes the very point in controversy, and it fails to notice the distinction between "the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union." (Chief Justice Taney in Scott *vs.* Sandford, 19 Howard, 405.)

"The difference," says Judge Cooley (Story on Constitution, section 1937), "is in a high degree important." And while it

may be true that the voter himself rarely, if ever, thinks of any difference between his vote for State and for Federal officers, yet, in law, there is a wide distinction.

In the one case he exercises the franchise under one jurisdiction or sovereignty, and in the other under a totally different one. In voting for Federal officers he exercises the freeman's right to take part in the government of his own creation, and he does this in contemplation of law, in his character or capacity of a citizen of the United States, and his right so to vote, legally depends upon such status or character. Clearly, then, the right of a citizen of the United States to vote for Federal officers can only be exercised under the authority or sovereignty of the United States, not under some other authority or sovereignty, and consequently the citizen of the United States could not justly have been deprived of such right by the State, even before the adoption of the Fourteenth amendment.

But whatever doubt there may have been as to this, we hold that the adoption of the Fourteenth amendment put an end to it and placed the matter beyond controversy. The history of that amendment shows that it was designed as a limitation on the powers of the States, in many important particulars, and its language is clear and unmistakable. "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States." Of course *all* the citizens of the United States are by this protected in the enjoyment of their privileges and immunities. Among the privileges, that of voting is the highest and greatest. To an American citizen there can be none greater, or more highly to be prized; and the preservation of this privilege to the citizens of the United States respectively is, by this amendment, placed under the immediate supervision and

care of the government of the United States, who are thus charged with its fulfillment and guaranty.

By ratifying this amendment the several States have relinquished and quitclaimed, so to speak, to the United States, all claim or right, on their part, to "make or enforce any law which shall abridge the privileges and immunities of citizens of the United States." The State of Missouri, therefore, is estopped from longer claiming this right to limit the franchise to "males," as a State prerogative; and the Supreme Court of Missouri should have so declared, and its failure to do so is error; because, by retaining that word in the State constitution and laws, not this plaintiff only, but large numbers of other citizens of the United States are "abridged" in the exercise of their "privileges and immunities as citizens of the United States," by being deprived of their right or privilege to vote for United States officers, as claimed by the plaintiff in her petition. Not only this, but we say further, that the ratification of this amendment was, in intendment of law, a solemn agreement, on the part of the States, that all existing legislation inconsistent therewith should be repealed, or considered as repealed, and that none of like character should take place in the future. The State of Missouri has acted upon this idea, *in part*, and its subsequent legislation, on the subject of the ballot, has been as follows: The ratification of the Fifteenth amendment (which we do not consider as having any direct bearing on the point now being considered, inasmuch as this amendment is merely prohibitory—not conferring any right, but treating the ballot in the hands of the negro as an existing fact, and forbidding his deprivation thereof.) Next, amending the State constitution and registration law, by simply *omitting* the word "white" from the clause "white male citizens."

This constitutes the entire legislation of the State of Missouri on this subject since the adoption of the Fourteenth amendment, and this omission of the word "white" was designed to make the State constitution conform to the amendment, *so far* as the *negro* was concerned, leaving the women citizens of the United States still under the ban of "involuntary servitude," in plain violation of the amendment.

So that, while the negro votes to-day in Missouri, there is not a syllable of affirmative legislation by the State conferring the right upon him. Whence then does he derive it? There is but one reply. The Fourteenth amendment conferred upon the negro race in this country citizenship of the United States, *and the ballot followed as an incident to that condition.* Or, to use the more forcible language of this Court, in the slaughter-house cases, 16 Wall., 71, "the negro having, by the Fourteenth amendment, been declared a citizen of the United States, *is thus made a voter in every State of the Union.*" If this be true of the negro citizen of the United States, it is equally true of the woman citizen. And we invoke the interposition of this Court to effect, by its decree, that which the Supreme Court of Missouri should have done, and declare that this objectionable word must be omitted, or considered as omitted from the Constitution and registration law of said State.

It cannot be pretended that the Constitution of the United States makes, or permits to be made any distinction between its citizens in their rights and privileges; that the negro has a right which is denied to the woman. The discrimination, therefore, made and continued by the State of Missouri, of which we complain, is an unjustifiable act of arbitrary POWER, not of right, and can be designated by no other term.

We proceed with our quotation from the opinion: "In this changed state of affairs, it was thought by those who originated

and adopted this amendment, that it was absolutely necessary that these emancipated people should have the elective franchise, in order to enable them to protect themselves against unfriendly legislation, in which they could take no part; that unless these people had the right to vote, and thus protect themselves against oppression, their freedom from slavery would be a mockery, and their condition but little improved. It was to remedy this that the Fourteenth amendment to the Constitution was adopted. It was to compel the former slave states to give these freedmen the right of suffrage, and to give them all of the rights of other citizens of the respective States, and thus make them equal with other citizens before the law."

It would be impossible for us to give any better reason for woman's need of the ballot than the Court has here given for that of the negro, except that woman's condition is even more helpless than his—" unless these people had the right to vote, and thus protect themselves against oppression, their freedom from slavery would be a mockery." How an American judge, with the claim of an American citizen before him, for the protection, which, as he truly says, this ballot alone can give, could see its lawfulness and justice in the one case, and not in the other, passes our comprehension.

We again quote from the opinion: " It was only intended to give the freedmen the same rights that were secured to all other classes of citizens in the State, and that if the other male inhabitants of the State over the age of twenty-one years enjoyed the right of suffrage, so should the males amongst the freedmen over the age of twenty-one years, enjoy the same right; it was not intended that females, or persons under the age of twenty-one years, should have the right of suffrage conferred on them."

In reply to this, we might content ourselves with saying that it

perfectly sound and safe; but it has often been forced from its natural meaning into the support of the most dangerous political heresies. The amendment was undoubtedly suggested by the reasoning of the Federalist on the subject of a general bill of rights" and trial by jury. Federalist No. 83–84.

We ask the Court to consider what it is to be disfranchised; not this plaintiff only, but an entire class of people, utterly deprived of all voice in the government under which they live! We say it is to her, and to them, a DESPOTISM, and not a Republic. What matters it that the tyranny be of many instead of one? Society shudders at the thought of putting a fraudulent ballot into the ballot-box! What is the difference between putting a fraudulent ballot in, and keeping a lawful ballot out? Her disfranchised condition is a badge of servitude. [Mr. Justice Bradley in the Grant parish case.] Take one illustration, evidenced by a recent decision of the Supreme Court of Missouri, in Clark *vs.* the National Bank of the State of Missouri, 47 Mo. Rep. 1. We use our own words, but we state it correctly; that a married woman cannot, by the law of Missouri, own a dollar's worth of personal property, except by the *consent of another!* it makes no difference that that other is her husband. This, it is true, is a State law, a matter exclusively of State legislation; but we mention it to show how utterly helpless and powerless her condition is without the ballot.

Either we must give up the principles announced in the Declaration of Independence, that governments derive their just powers from the consent of the governed; and are formed by the people to protect their rights, not to withhold them; or we must acknowledge the truth contended for by the plaintiff, that citizenship carries with it every incident to every citizen alike. It cannot be disputed, that upon this principle of absolute political

equality, our government is founded. So thought the Hon. Luther Martin, of Maryland, one of the most distinguished lawyers of his day, and a member of the Convention that framed our Constitution. We quote his own words. (Elliott's Debates, vol. 4.) "This, sir, is the substance of the arguments, if arguments they may be called, which were used in favor of inequality of suffrage. Those who advocated the *equality of suffrage*, took the matter up on the original principles of government; they urged that all men considered in a State of nature, before any government formed, are equally free and independent, no one having any right or authority to exercise power over another, and this, without any regard to difference in personal strength, understanding or wealth. That when such individuals enter into government, they have *each* a right to an *equal voice* in its first formation, and afterward have *each* a right to an equal *vote* in every matter which relates to their government; that if it could be done conveniently, they have a right to exercise it in person; when it cannot be done in person but for convenience, representatives are appointed to act for them; *every person* has a right to an *equal vote* in choosing that representative who is entrusted to do for the whole, that which the whole, if they could assemble, might do in person, and in the transacting of which each would have an equal voice. That if we were to admit, because a man was more wise, more strong, or more wealthy, he should be entitled to more votes than another, it would be inconsistent with the freedom and liberty of that other, and would reduce him to *slavery*. Suppose, for instance, ten individuals in a state of nature about to enter into government, nine of whom are equally wise, equally strong, and equally wealthy, the tenth is ten times as wise, ten times as strong, or ten times as rich; if for this reason he is to have ten votes for each vote of either of the others, the nine might as well have no vote at all; since,

though the whole nine might assent to a measure, yet the vote of the tenth would countervail and set aside all their votes.

"If this tenth approved of what they wished to adopt, it would be well, but if he disapproved, he could prevent it, and in the same manner he could carry into execution any measure he wished, contrary to the opinion of all the others, he having ten votes, and the others altogether but nine. It is evident that on these principles the nine would have no will or discretion of their own, but must be totally dependent on the will and discretion of the tenth; to him they would be as absolutely *slaves* as any negro is to his master; if he did not attempt to carry into execution any measure injurious to the other nine, it could only be said that they had a *good master;* they would not be *the less slaves*, because they would be *totally dependent* on the *will of another*, and not on their own will. They might not *feel their chains*, but they would notwithstanding *wear them*, and whenever their master pleased he might draw them so tight as to gall them to the bone. Hence it was urged the inequality of representation, or giving to one man more votes than another on account of his wealth, &c., was *altogether inconsistent* with the *principles of liberty*, and in the same proportion as it should be adopted in favor of one or more, *in that proportion are the others enslaved.*" These are the words, not lightly uttered, nor to be by us lightly considered, of one of the framers of the Constitution; and in complete accord with this principle of entire equality of individual right, see how those men who had fought through the War of Independence did their work. Upon what broad and comprehensive foundations it is laid. Examine the Constitution, the work of their hands. Do we find any recognition of inequality of rights? Not a syllable. On the contrary, every safeguard is thrown around them; "no State shall pass any bill of attainder," or "grant any title of nobility." So, too,

when it comes to the practical recognition of these rights at the ballot-box, all are included. "The House of Representatives shall be composed of members chosen every second year by the PEOPLE of the several States," not by a part—not by the "males" —but simply by "the people of the several States." The same "people" who ordain and establish that Constitution as the supreme law of the land, they are to do the voting, they are to elect. There is not one word as to sex. The elector, male or female, must be one of the people or citizens, that is all. But when these electors come to exercise this right or privilege, then the matter of qualification arises, the age of the elector, the time, place and manner of the exercise of the right, are to be considered, and the convention, instead of laying down a uniform rule or standard, for all the States, which would have produced change and confusion, thought it best to leave this feature of it as it already stood in the several States. But *the right itself* is secured to the people of the United States, and in its very nature cannot be derived from any other authority.

We deem it proper, in this connection, to refer to the well-known fact that women voted in one of the States (New Jersey) down to the year 1807, when they were unjustly deprived of the right by an act of the Legislature of that State. We say unjustly, because no legislature can deprive a citizen of a constitutional right, and the matter has slumbered ever since. The constitution of New Jersey, adopted in 1776, used the term "inhabitants" in describing electors, and under this constitution women were recognized as voters, as well as men. In conformity with this constitutional provision the Statute law was so worded as to read "he or she," in speaking of electors, thus affording a contemporaneous and legislative attestation of the truth of our statement. This law of 1776 could not, of course, be the source of authority to

anyone for voting under a sovereignty not then in existence, not created until 1789, thirteen years afterwards. Therefore, when the elector, male or female, in New Jersey, voted for Federal officers in 1789, it was done by virtue of his or her status of citizenship, under the new and paramount sovereignty, and not under the law of 1776; and so it has continued ever since, the elector voting for United States officers by virtue of his citizenship of the United States, and for state officers as a citizen of the State. We believe, then, we are justified in the statement that white women in New Jersey voted, under State authority, for the members of the Constitutional Convention of 1787. That they next voted, under like authority, for the ratification of the newly framed Constitution of the United States; *and then*, that Constitution having been adopted, as newly created citizens of the newly created sovereignty, the white women of New Jersey voted at the five succeeding Presidential elections—for Washington, for Adams and for Jefferson. The contest in 1800 was bitter beyond all precedent, and we are told that all the women of the State entitled to vote did so. We refer to the constitution and laws of New Jersey; to a work entitled The Historical Magazine, published in Boston in 1857, vol. 1, p. 361; to the National Intelligencer, Washington, October 3d, 1857; to Notes and Queries, vol. 8, p. 171, August, 1853.

But apart from these considerations which we deem amply sufficient to sustain our position, an examination into the nature and character of the right itself will further show that it is one of which the citizen cannot justly be deprived, save for cause.

The First amendment to the Constitution declares that Congress shall make no law abridging freedom of speech or of the press, thus incorporating into the organic law of this country absolute freedom of thought or opinion. We presume it will not be

doubted that the States are equally bound with Congress by this prohibition, not only because, as Chief Justice Taney says, "the Constitution of the United States, and every article and clause in it, is a part of the law of every State in the Union, and is the paramount law,"—(Prigg *vs.* The Comm., 16 Peters R., 628), but because, in the very nature of things, freedom of speech or of thought cannot be divided. It is a personal attribute, and once secured is forever secured.

To vote is but one form or method of expressing this freedom of speech. Speech is a declaration of thought. A vote is the expression of the will, preference or choice. Suffrage is one definition of the word, while the verb is defined, to choose by suffrage, to elect, to express or signify the mind, will or preference, either *viva voce*, or by ballot. We claim then that the right to vote, or express one's wish at the polls, is embraced in the spirit, if not the letter, of the First amendment, and every citizen is entitled to the protection it affords. It is the merest mockery to say to this plaintiff, you may write, print, publish or speak your thoughts upon every occasion, *except* at the polls. *There* your lips shall be sealed. It is impossible that this can be American law!

Again, it is the opinion of some that suffrage is *somehow* lodged in the government, whence it is dispensed, or conferred upon the citizen, thus completely reversing the actual fact. Suffrage is never conferred by government upon the citizen. He holds it by a higher title. In this country government is the source of power, not of rights. These are vested in the individual—are personal and inalienable. Society can only acquire the authority to regulate these rights, or declare them forfeited, for cause. The time, place and manner of their exercise are under governmental control, but their origin and source are in the individual himself. "I shall, therefore," says a writer on government, "assume it as

an incontrovertible position, as a first principle, that the right of private opinion, which is, in fact, no other than the right of private judgment upon any subject presented to the mind, is a sacred right, with which society can, on no pretence, authoritatively interfere, without a violation of the first principles of the law of nature." (Chipman on Government, chap. 5.)

"OTHER liberties," says Erskine, "are held *under* governments, but the liberty of opinion keeps GOVERNMENTS THEMSELVES in due subjection to their duties." (Speech in defense of Thomas Paine.)

But this clause of the Missouri law further violates the Thirteenth amendment, which declares that neither slavery nor involuntary servitude shall exist in the United States, except for crime, etc. This amendment is a copy of the 6th clause of the famous Ordinance of 1787, which secured freedom for the Northwest Territory, and has now become the organic law for the entire Union. It is well-known that this Ordinance was drawn by the Hon. Nathan Dane, of Massachusetts, and, as Judge Story says, "it is an imperishable monument to his fame."

We say that this Missouri law violates this amendment, inasmuch as it places the plaintiff in a disfranchised condition, which is none other than a condition of servitude—of "involuntary servitude," because, although a citizen in the fullest acceptation of the term—a member of this body politic—one of the "people"—she has never consented to this law; has never been permitted to express either consent or dissent, nor given any opportunity to express her opinion thereon, in the manner pointed out by law, while, at the same time, SHE IS TAXED, AND HER PROPERTY TAKEN TO PAY THE VERY MEN WHO SAT IN JUDGMENT UPON AND CONDEMNED HER!

FINALLY, such is the nature of this privilege—so individual—so purely personal is its character, that its indefinite extension *detracts not in the slightest degree from those who already enjoy it*, and by an affirmation of the plaintiff's claim all womanhood would be elevated into that condition of self-respect that perfect freedom alone can give.

RÉSUMÉ.

1st. As a *citizen* of the United States, the plaintiff is entitled to any and all the "privileges and immunities" that belong to such position however defined; and as are held, exercised and enjoyed by other citizens of the United States.

2. The elective franchise is a "privilege" of citizenship, in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in his or her government.

3d. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of goverment—the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.

4th. But the Constitution of the United States so far from recognizing or permitting any denial or abridgment of the privileges of its citizens, expressly declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

5th. It follows that the provisions of the Missouri constitution and registry law before recited, are in conflict with and must yield to the paramount authority of the Constitution of the United States.

A few words more and we have done. The plaintiff has sought, by this action, for the establishment of a great principle of fundamental right, applicable not only to herself but to the class to which she belongs; for the principles here laid down (as in the Dred Scott case), extend far beyond the limits of the particular suit, and embrace the rights of millions of others, who are thus represented through her.

She has a right, therefore, to be heard for her cause; and in making this plea, she seeks only to give expression to those principles upon which, as upon a rock, our government is founded.

It is impossible that that can be a republican government in which one-half the citizens thereof are forever disfranchised.

A citizen disfranchised is a citizen attainted; and this, too, in face of the fact, that you look in vain in the great charter of gov ernment, the Constitution of the United States, for any warrant or authority for such discrimination.

To that instrument she appeals for protection.